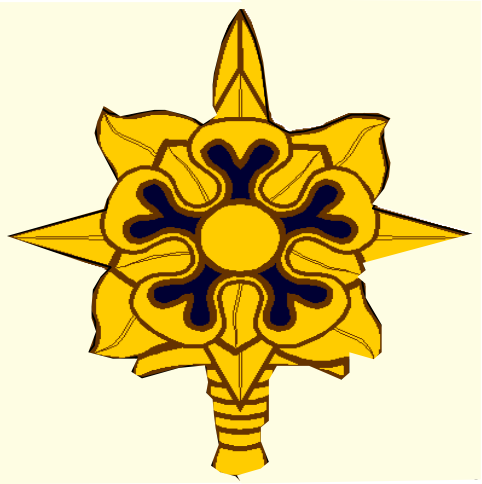
Intelligence Oversight

References

- **Army Regulation 381-10**
- **DoD Directive 5240.1 – R**
- **Executive Order 12333**
- **<u>The Intelligence Oversight Guide</u>**



Enabling Learning Objectives

Student Text 2, Advance Sheets, page 9

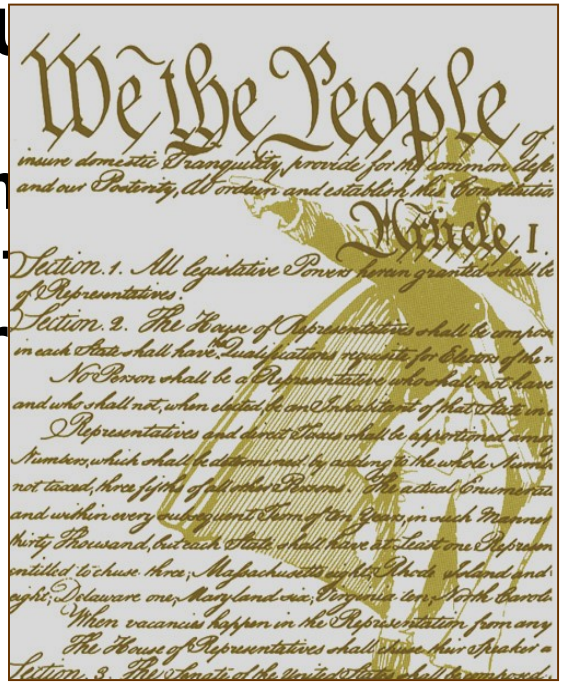
ELO

- **Describe an IG's responsibilities for providing independent oversight of Army intelligence activities.**
- **Describe the types of units and staffs involved in intelligence activities as defined in AR 381-10, Army Intelligence Activities.**
- **Describe the recommended inspection methodology used by IGs to conduct Intelligence Oversight inspections as part of their command's OIP.**

Intelligence Oversight

- **The purpose of Intelligence Oversight is to enable Military Intelligence components to accomplish their missions without violating the constitutional rights of U**

- **Military Intelligence compon can collect what they need t their foreign intelligence or counterintelligence missions.**


We the People
Article I
Section. 1. All legislative Powers herein granted shall be
of Representatives.
Section. 2. The House of Representatives shall be compos
in each State shall have Qualifications requisite for Electors of the
No Person shall be a Representative who shall not have
and who shall not, when elected, be an Inhabitant of that State in
Representatives and direct Taxes shall be apportioned amo
Numbers, which shall be determined by adding to the whole Numb
not taxed, three fifths of all other Persons. The actual Enumera
and within every subsequent Term of ten Years, in such Manner
thirty Thousand, but each State shall have at least one Represen
entitled to chuse three, Massachusetts eight, Rhode Island and
eight, Delaware one, Maryland six, Virginia ten, North Carolin
When vacancies happen in the Representation from any
The House of Representatives shall chuse their Speaker a
Section. 3. The Senate of the United States shall be composed

Background

Intelligence Oversight

- **During the 1960s, Army intelligence participated with other agencies in programs that aggressively collected information about U.S. citizens who were involved in the civil rights movement or who opp**
- **Great public outcry resulted from this "Big-Brother" activity.**
- **President Ford established some initial rules about this type of information-gathering activity in an Executive Order.**

- **Each president since Gerald Ford has re-issued this Executive Order.**
- **Currently, Executive Order 12333 (1981) is the Executive Order that establishes rules and procedures for collecting data on U.S. persons.**

Executive Order 12333

Implementing Documents

- **Department of Defense (DoD) Directive 5240.1 – R is the DoD implementing document for this Executive Order.**
- **Army Regulation 381-10, U.S. Army Intelligence Activities, is the Army's implementing document.**
- **Army Regulation 381-10 is nothing more than a reprint of the DoD directive with additional Army guidance and language added in bold-face type.**
- **The person who can answer legal questions about this regulation is your Operational Law Attorney.**

Executive Order 12333

Provides procedures for . . .

Intelligence Oversight

- **The collection, dissemination, or retention of information on U.S. persons by intelligence components. (Procedures 2, 3, and 4)**

- **Intrusive collection techniques with the proper authority (surveillance, searches, phone taps, and so on). (Procedures 5 through 11)**

- **Assistance by intelligence components to law-enforcement. (Procedure 12)**

- **Employee Conduct and the reporting and investigating of violations. (Procedures 14 and 15)**

The purpose of this Presidential Order is to ensure that Commanders do not use Army intelligence systems, personnel, or capabilities (intended for use on foreign powers, troops, and activities) inappropriately against U.S. persons.

Army Regulation 20-1 and Intelligence Oversight

- **Army Regulation 20-1 charges all Army IGs with providing independent oversight of intelligence components within their command.**

- **Every IG will inspect intelligence components and activities as part of the Organizational Inspection Program (OIP) and report any questionable activities.**

AR 20-1, paragraph 1-4 b (8)

IG Responsibilities for Intelligence Oversight

ELO

- **Inspect intelligence components and activities as part of the Organizational Inspection Program (OIP) to ensure compliance with Army Regulation 381-10.**

- **Report any questionable activities within five days to SAIG-IO in accordance with Procedure 15.**

- **Ensure that inspected personnel are familiar with the provisions of Army Regulation 381-10 (Procedures 1 through 4 and 14) and know how to report questionable activities in accordance with Procedure 15.**

The Intelligence Oversight Guide, page 1-3

Army Regulation 381-10 Procedures

Intelligence Oversight

Procedure One: General Provisions
Procedure Two: Collection of Information About U.S. Persons
Procedure Three: Retention of Information About U.S. Persons
Procedure Four: Dissemination of Information About U.S. Persons
Procedure Five: Electronic Surveillance
Procedure Six: Concealed Monitoring
Procedure Seven: Physical Searches
Procedure Eight: Searches and Examination of Mail
Procedure Nine: Physical Surveillance
Procedure Ten: Undisclosed Participation in Organizations
Procedure Eleven: Contracting for Goods and Services
Procedure Twelve: Provision of Assistance to Law Enforcement Authorities
Procedure Thirteen: Experimentation on Human Subjects for Intelligence Purposes
Procedure Fourteen: Employee Conduct
Procedure Fifteen: Identifying, Investigating, and Reporting Questionable Activities

IGs are typically concerned with Procedures 1, 2, 3, 4, 14, and 15

Procedure 15

- **Under Procedure 15, IGs must . . .**
  - **Identify, investigate, and report questionable activities. Employees should report through their Commander or IG, who must then report all questionable activities within five days to SAIG-IO.**
  - **Determine whether non-intelligence components are being used for foreign intelligence or counterintelligence purposes.**
  - **Ensure that military intelligence components have procedures in place for reporting questionable activities.**

You can reach SAIG-IO at DSN 227-6698 or (703) 697-6698.

Procedure 15

Applies to . . .

- **Intelligence Components or Activities**
- **<u>Any</u> organization, staff, or office used for <u>foreign intelligence or counterintelligence purposes</u>**

Procedure 15

Does not apply to . . .

- **Non-foreign intelligence or counterintelligence activities**
- **Unit administrative activities (social rosters, etc.)**
- **Law-enforcement activities**
- **Criminal intelligence activities of the Provost Marshal and the CID Command**

What is a U.S. Person?

Intelligence Oversight

- **The term "United States person" means**

  (1) A United States citizen;

  (2) An alien known by the DoD intelligence component concerned to be a permanent resident alien;

  (3) An unincorporated association substantially composed of United States citizens or permanent resident aliens;

  (4) A corporation incorporated in the United States, except for a corporation directed and controlled by a foreign government or governments. A corporation or corporate subsidiary incorporated abroad, even if partially or wholly owned by a corporation incorporated in the United States, is not a United States person.

AR 381-10, page A-

Intelligence Activities

Intelligence Oversight

Refers to all activities that Department-of-Defense intelligence components are authorized to undertake pursuant to Executive Order 12333.

AR 381-10, page A-2

The activities must focus on the collection, dissemination, and production of military and military-related foreign intelligence and counterintelligence to be legal.

Intelligence Components

What are they?

ELO

Intelligence Oversight

- **Intelligence units that support unified or specified commands.**
- **Intelligence staff officers supporting military commanders at all echelons (Army G-2 / Corps and Division G-2 shops / Brigade and Battalion S-2 shops).**
- **Numbered Military Intelligence battalions and br**
- **Military Intelligence Schools.**
- **Reserve Component intelligence organizations.**
- **MACOM Offices of the Deputy Chief of Staff, Intelligence (ODSCINT).**
- **Other Department of the Army components performing intelligence activities.**

Questionable Activity

Conduct that constitutes, or is related to, an intelligence activity that may violate the law, any Executive Order or Presidential Directive, or applicable Department of Defense policy.

The Intelligence Oversight Guide, page 1-4

SAIG-IO receives about four to five questionable-activity reports per month.

Questionable Activity

Recent Examples

- **State-side reports have concerned tactical Military Intelligence (MI) units collecting, retaining, or disseminating information on U.S. persons as part of Anti-Terrorism or Force Protection efforts.**

- **Reports from currently deployed units include:**
  - **Conduct of MI interrogators toward detainees**
  - **Unauthorized source operations by counter-intelligence (CI) personnel and battalion S-2s**
  - **Use of non-CI personnel in a CI role**
  - **Collection on a U.S. soldier with no connection to foreign intelligence or terrorism**

Questionable Activity

Intelligence Oversight

- **Can the S-2 keep files on soldiers in the battalion who are members of a suspicious group?**

  No.

- **Can the MI Company conduct surveillance of the local chapter of Hell's Angels because we think that they may be a risk to our families and soldiers?**

  CID or the Provost Marshal have regulatory authority but not the intelligence organizations.

- **Can the S-1 collect and retain information on the spouses and children of soldiers in the battalion?**

  Yes (Social roster, NEO information, etc.)

- **Can we use Low-Level Voice Intercepts (LLVI) to help local law-enforcement agencies?**

  Maybe. Check Procedure 12 and consult your Operational Law Attorney.

- **Can Military-Intelligence components collect information on the Ku Klux Klan?**

  No – as long as they are not agents of a foreign power. As a force-protection issue, the Provost Marshal or CID is better suited to collect this information.

Intelligence Oversight

Inspection Methodology

ELO

- **Identify your command's intelligence component**
- **Involve your local Staff Judge Advocate**
- **Request a briefing from these intelligence components on their program to comply with AR 381-10.**
- **Does the unit or activity have a copy of AR 381-10 and appropriate SOPs on hand?**
- **Examine training records to determine if personnel are receiving training on AR 381-10.**
- **Quiz unit or activity members on AR 381-10 using scenarios.**
- **Review unit procedures for handling all intelligence information.**

Intelligence Oversight

Inspection Methodology (continued)

ELO

- **Physically check the intelligence files for U.S. person information.**
- **Check the unit or activity's annual review of intelligence files.**
- **Pay particular attention to files pertaining to support given to law-enforcement activities.**
- **Determine if the unit or activity knows about Procedure 15 and how to report a questionable activity.**

The Intelligence Oversight Guide, pages 2-1 to 2-5

Changing Times

Intelligence Oversight

Evolving Guidance

Intelligence Oversight

Executive Order 12333

USA Patriot Act

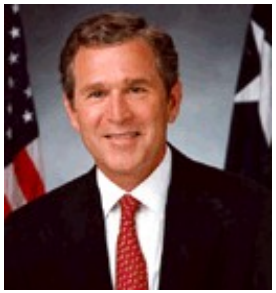
New Executive Order?

New Legislation And Laws?

Department of Homeland Security

Senate Select Committee on Intelligence

House Permanent Select Committee on Intelligence



President Bush

Attorney General Gonzales

Secretary Chertoff Department of Homeland Security

Intelligence Oversight